IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application No.796 of 2004

Sahdeo s/o Mahadeo Ingle,
Aged about 40 years,
Occ.: Agril.,
R/o Khirgavhan,
Tq. Daryapur,
District Amravati. ... Applicant

Versus

1. Namdeo s/o Gendaji Ingle,
   Aged about 45 years,
   Occ.: Agril,
   R/o Anjangaon Surji,
   Pantai,
   Tq. Anjangaon,
   Distt. Amravati.

2. Balu s/o Suryabhan Umale,
   (Deleted as per Court Order
   dated 6-8-2004).

3. Suryabhan s/o Ganpat Umale,
   Aged about 60 years,
   Occ. Agril.

4. Sou. Chandrakala Suryabhan

Umale.

Above 2 to 4 all Khirgavhan,
Tq. Daryapur,
District Amravati.

5. State of Maharashtra,
through P.S.O. Khallar,
District Amravati. ... Non-Applicants/
No.1 – Org. Complainant
Nos.2 to 4 – Org.Accused

Shri V.M. Deshpande, Counsel for Applicant.
Shri Firdos T. Mirza, Counsel for Respondent No.1.
Shri S.S. Doifode, Additional Public Prosecutor for Respondent No.5.

Coram : R.C. Chavan, J.

Date of Reserving the Order : 19th January, 2006

Date of Pronouncing the Order :

ORDER :

1. By this application under Section 482 of the Code of Criminal Procedure, the applicant, original accused No.4 in Misc. Criminal Case No.207 of 1996, challenges the order directing issuance of process, passed by the learned

Judicial Magistrate First Class, Daryapur, which was confirmed in revision by the learned Additional Sessions Judge, Achalpur.

2. Facts, which led to prosecution of the applicant and non-applicants No. 3 and 4 along with deceased non-applicant No.2 at the instance of non-applicant No.1/original complainant, are as under :

Complainant's daughter Shalini was married to deceased non-applicant No.2 Balu on 21-5-1990. The accused started ill-treating Shalini for failure to comply with their unlawful demand for money. Shalini had filed a case under Section 125 of the Code of Criminal Procedure for grant of maintenance allowance. As a result of compromise, Shalini withdrew the case and resumed cohabitation with Balu. However, the accused again started ill-treatment. Shalini's, eldest daughter had expired. On 16-5-1995, the complainant learnt that Shalini had been admitted to hospital due to poisoning. The complainant reached the hospital at about 3 a.m. on 17-5-1996 but learnt that the victim had died. Since the complainant was convinced that the accused had murdered his daughter by poisoning her, the complainant made a report to police. The complainant

obtained custody of victim's son Sarang. Sarang informed the complainant that on the incidental night all the accused had beaten up Shalini. Accused No.2 to 4 caught her and accused No.1 administered poison. The complainant conveyed this to police. It seems that on the report of the complainant, the police had completed investigation and filed chargesheet against only non-applicants No.2 to 4 (and not the present applicant) for offences punishable under Section 498-A and 306 of the Penal Code, but not for offence punishable under Section 302 of the Penal Code. Since the police did not register an offence punishable under Section 302 read with Section 34 of the Penal Code, the complainant filed a private complaint case, on 10-10-1996, wherein he had cited himself, grandson Sarang, son Dharmendra, wife Parvati, one Mohan Ingle, the Station House officer and the Medical Officer as witnesses.

3. After examining the complainant and child witness Sarang, the learned Judicial Magistrate First Class, Daryapur, on 15-10-1996, directed issuance of process against all the accused for offence punishable under Section 302 read with Section 34 of the Penal Code. Aggrieved thereby, the accused preferred

Criminal Revision bearing No.62 of 1999 before the learned Additional Sessions Judge, Achalpur. After considering the contentions advanced, the learned Additional Sessions Judge dismissed the revision-petition. Aggrieved thereby, this application has been filed.

4. Notice was issued to the original complainant arrayed as non-applicant No.1, the other co-accused, as also the State. Accused No.1 Balu, who was arrayed as non-applicant No.2, died.

5. I have heard the learned counsel for the applicant as well as non-applicant No.1 and the learned Additional Public Prosecutor for non-applicant No.5/State.

6. The learned counsel for the applicant submitted that the order passed by the learned Additional Sessions Judge rejecting the revision-petition and confirming the order passed by the learned Magistrate is liable to be set aside in exercise of inherent powers of this Court, since the order is not at all tenable. The learned counsel submitted that the inherent powers of the Court could be exercised even after the Court of Session, whose jurisdiction was invoked by the

applicant, had turned down the applicant's revision-petition, though a second revision at the instance of the applicant would have been barred under sub-section (3) of Section 397 of the Code of Criminal Procedure. He submitted that Section 482 of the Code of Criminal Procedure very clearly prescribes that there is virtually no limit on the exercise of inherent powers by the Court. The Section lays down that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to prevent abuse of process of any Court or otherwise to secure the ends of justice. The learned counsel submitted that since powers under Sections 397 and 482 of the Code of Criminal Procedure are exercised in two different jurisdictions and fields, the applicant was entitled to invoke inherent powers of the Court, though the revision before the learned Additional Sessions Judge had been dismissed. He submitted that grave and substantial injustice, which is likely to be caused to the applicant, ought to be set right in exercise of inherent powers by the Court.

7. To buttress his submissions regarding the scope and ambit of powers under Section 397 and 482 of the Code of Criminal Procedure, the learned

counsel for the applicant relied on a number of judgments.

8. In Madhu Limaye v. The State of Maharashtra, reported in (1977) 4 Supreme Court Cases 551, the Supreme Court had considered the scope of powers under Sections 397 and 482 of the Code of Criminal Procedure. Referring to the provisions of Section 561A of the old Code of Criminal Procedure, which corresponds to Section 482 of the Code, the Court noticed the following principles in relation to exercise of inherent power of the High Court.

> *"At the outset the following principles may be noticed in relation to the exercise of the inherent power of the High Court which have been followed ordinarily and generally, almost invariably, barring a few exceptions :*
>
> *(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;*
>
> *(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;*

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code."

9. The learned counsel submitted that the Court had considered whether the *non obstante* clause in Section 482 of the Code also overrode the bar for exercise of revisional jurisdiction against interlocutory orders imposed by Section 397(2) of the Code of Criminal Procedure. The Court observed that if the Court were to say that the said bar was not to operate for the exercise of inherent powers at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. The Court then set out to find a harmonious way out. The Court held as under :

> *"... In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play,*

there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revision power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. ..."

10. The Court then quoted with approval the following passage from its decision in R.P. Kapur v. The State of Punjab, reported in AIR 1960 Supreme Court 866 :

" Ordinarily criminal proceedings instituted against an accused

person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of

appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a

reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

Further observations in the decision in Madhu Limaye's case come in the context of question which was posed in the said case before the Court, namely, as to what is an interlocutory order, since the Court was considering the provision of Section 397(2), which bars exercise of revisional jurisdiction to challenge interlocutory orders. However, the principles laid down in Madhu Limaye's case in respect of this bar of exercise of revisional power against interlocutory order would be equally valid in respect for bar for invoking revisional jurisdiction of the High Court by a person, who has already exhausted the remedy of recourse to revisional jurisdiction by filing revision before the Court of Session.

11. In Krishnan and another v. Krishnaveni and another, reported in (1997) 4 SCC 241, the Court held that though a revision to the High Court may be prohibited by Section 397(3) of the Code, inherent powers of the High Court were still available and, therefore, the High Court was justified in preventing

miscarriage of justice.

12. In the case of Jitender Kumar Jain v. State of Delhi and others, reported in (1998) 8 SCC 770, the Court held that though a second revision did not lie before the High Court, when one was dismissed by the Sessions Court, the proceedings before the Court of Session were open to scrutiny by the High Court in exercise of its inherent powers under Section 482 and, therefore, the High Court should not have dismissed the petition, since it was open for the High Court not to interfere after examining the case under Section 482 of the Code.

13. Similar view has been taken in Kailash Verma v. Punjab State Civil Supplies Corporation and another, reported in (2005) 2 SCC 571. The learned counsel for the applicant also relied on decisions of this Court in Ashok v. Pralhad and another, reported in 1988 Cri.L.J. 78; Mrs. Kumudesh Bhandari v. Ms. Gopika Tapuriah and Another, reported in XI-1995(4) Crimes 329, of Allahabad High Court in M/s. Prestolite of India Ltd. and another v. The Munsif Magistrate, Hawali and another, reported in 1978 Cri.L.J. 538; and of Kerala High Court in Kunhammed Haji v. Amina, reported in 1996(1) Crimes 176

(H.C.), which support invocation of inherent jurisdiction.

14. The learned counsel for non-applicant No.1/complainant submitted that a second revision petition cannot be disguised as one under Section 482 of the Code. Prayer in the instant case is very clear, namely, to call for record, which is permissible only under Section 397 of the Code of Criminal Procedure. Therefore, this is in fact a second revision disguised as an application for invocation of inherent powers of the Court. In Rajan Kumar v. State of Karnataka, reported in 1990 (Supp) SCC 132, the Supreme Court had specifically disapproved such mis-labelling of proceedings to invoke jurisdiction. The learned counsel submitted that apart from the decision in the case of R.P. Kapur v. State of Punjab (AIR 1960 SC 860), to which a reference was made in the case of Madhu Limaye v. The State of Maharashtra, [(1977) 4 SCC 551], the Supreme Court had considered the question of exercise of inherent powers in the case of State of Punjab v. Kasturi Lal and others, reported in 2005(3) Cri.L.J. 3200. The Court had observed therein that the scope for interference with an order framing charge was extremely limited. It reiterated that the three

requirements enumerated in Section 482 of the Code and also the principles enunciated in R.P. Kapur v. The State of Punjab must be established for invoking provisions of Section 482. The Court also recounted the seven categories enumerated in State of Haryana and others v. Bhajan Lal and others, reported in 1992 Supp (1) SCC 335. The Court observed that though it was neither possible nor desirable to lay down any inflexible rule, while exercising inherent jurisdiction, the Court does not function as a Court of appeal or revision and the inherent jurisdiction has to be exercised sparingly, carefully, with caution and only when such exercise is justified by the tests specifically laid down in the section itself. The Court would be justified to quash the proceedings in exercise of inherent powers if it finds that initiation or continuation of the proceedings amounts to abuse of process of Court when no offence is disclosed by the complaint. The learned counsel for the complainant relied on decision of this Court in Mukunda Ramaji Dunedar v. Smt. Sitabai w/o Mukunda Dunedar, reported in 2005(1) Mh.L.J. 32.

15. The learned counsel for the applicant fairly brought to my notice a

decision of the Supreme Court in the case of Jagir Singh v. Ranbir Singh and another, reported in 1979 Cri.L.J. 318. In that case, Jagir Singh's wife Kirpal Kaur had filed an application for maintenance. The learned Magistrate granted maintenance at the rate of Rs.200/- per month to Kirpal Kaur and at the rate of Rs.75/- per month to Ranbir Singh. Jagir Singh preferred a revision before the Sessions Court, which, by consent of parties, made a reference to the High Court recommending award of maintenance at the rate of Rs.150/- per month. This reference was accepted by the Court. The order directing maintenance at the rate of Rs.75/- per month to Ranbir Singh, son of Jagir Singh, was, however, left intact. Thereafter, new Code came into force in the year 1974. Jagir Singh applied under Section 127 of the new Code for cancellation of the maintenance allowance granted to his son. The learned Magistrate allowed the application of Jagir Singh and cancelled maintenance payable to Ranbir Singh. The revision application of Ranbir Singh before the Sessions Court was dismissed. Ranbir Singh then filed second revision application before the High Court of Punjab and Haryana. It was argued that this second revision was barred under Section

397(3) of the Code of Criminal Procedure. The High Court, however, held that Ranbir Singh was entitled to maintenance and set aside the contrary orders of the Courts below. Jagir Singh, therefore, approached the Supreme Court and it was argued that the right of respondent Ranbir Singh to invoke revisional jurisdiction of the High Court became exhausted when he invoked the revisional jurisdiction of the Sessions Court. The counsel for Ranbir Singh submitted that the revision application could be treated as one under Article 227 of the Constitution and, therefore, the order of the High Court need not be disturbed. In this context, the Court observed that the object of Section 397(3) of the Code was clear: namely, to prevent the multiple exercise of revisional powers and to secure early finality to orders. The Court held that a person aggrieved by an order of inferior Criminal Court, is given an option to approach either the High Court or the Court of Session and that the language of Section 397(3) of the Code was clear and it does not admit of any interpretation other than that once the party invokes revisional jurisdiction of one Court, he is precluded from invoking revisional jurisdiction of the other Court. The Court rejected the contention that the second

revision was in fact not directed against the order of the Magistrate, but against the order of the Sessions Judge and, therefore, it was not a second revision. The Court also rejected the contention that the order passed by the High Court could be treated as one in exercise of jurisdiction under Article 227 of the Constitution. The Court then proceeded to set aside the order of the High Court.

16. The learned counsel for the applicant also relied on a Full Bench decision of Andhra Pradesh High Court in the case of In re Puritipati Jagga Reddy, reported in AIR 1979 Andhra Pradesh 146, where the Court was considering the following two questions :

> *"(1) Whether it would be open to party to invoke the provisions of S. 482, Cr.P.C. 1973, when he seeks to file a second revision in the High Court under S. 397(3) ?*
>
> *(2) Whether sub-section (3) of S. 397 takes away the jurisdiction of this Court (High Court) to suo motu exercise its revisional jurisdiction in a case where the Sessions Judge had already exercised his revisional jurisdiction under sub-sec. (3) on an application made to him under that sub-section."*

The Court held that bar contained in sub-section (3) of Section 397 of the Code applied to the person in choosing the remedy and that it did not apply to the other parties or persons and so the bar would not extend to the power of the High Court to call for and examine the record. The Court, therefore, held that a party, who has been unsuccessful before the Sessions Judge, may seek to bring it to the notice of the High Court under Section 482 of the Code of Criminal Procedure, but the High shall not automatically take notice of this and must scrutinise and examine whether there has been any miscarriage of justice in any particular case, before it entertains any such petition filed by an unsuccessful party. The Full Bench of the Andhra Pradesh High Court observed that the best course would be to place the matter before the Court for admission and at the time of such admission, the Court must be prima facie satisfied before it admits the application that there has been abuse of the process of any Court or that the High Court's interference would be warranted to secure the ends of justice. The Court observed that the label given to the case is immaterial, namely, whether it is a revision or an application invoking inherent powers.

17. What emerges from the decisions cited at bar could be summarized as under :

(1) Second revision to High Court at the instance of the same party is decidedly barred.

(2) The bar, however, applies to the party and not to the Court in examining the correctness of impugned order.

(3) Mis-labelling of a proceeding would not be entirely irrelevant and if a second revision is obviously disguised as an application for invocation of inherent jurisdiction, the same may not be countenanced, but only after examining this aspect.

(4) Since bar to preferring second revision is enacted to prevent multiple exercise of revisional power and to secure early finality to orders, it should not be allowed to be circumvented except when the case squarely falls within the requirements of Section 482 of the Code of Criminal Procedure.

(5) An exhaustive enumeration of categories of cases where exercise of inherent jurisdiction may be permitted cannot be made and, therefore, at the stage of admission each case must be examined to find out if it fulfills the tests laid down in the

section itself.

18. The learned counsel for the applicant, therefore, submitted that there was no bar to invocation of jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, though the applicant's revision challenging the issue of process had been dismissed.

19. The learned counsel for the applicant, relying on a decision in Rosy and another v. State of Kerala and others, reported in JT 2000(1) SC 84, contended that the objection to issue of process ought to be taken at the earliest opportunity for being entertained at a later stage of proceeding. His need to raise this objection at the stage of issue of process itself, is undoubtedly valid, but it does not follow that the objection must also be allowed in light of principles enumerated. The objection would have to be examined with reference to the facts disclosed.

20. The complaint does not show as to what was the role of Dharmandra, Parvati and Mohan, who were not examined. Though role of Medical Officer

and Station House Officer, who too were cited as witnesses but not examined, would be clear in the State case, the learned counsel for the applicant pointed out that Sahadeo was not an accused in the police case. Sahadeo was not even member of family of other accused. The learned counsel submitted that Sarang, a two year old child, could not have seen the incident or coherently reported about it to implicate the applicant and, therefore, process issued against the applicant was uncalled for and and amounted to abuse of process of Court.

21. The learned counsel for applicant/ accused submitted that in Municipal Corporation of Delhi v. Ram Kishan Rohtagi and others, reported in AIR 1983 SC 67, after considering the effect of limiting Clauses in Section 397 on the powers of the High Court under Section 482 of the Code, as regards the grounds on which the proceedings could be quashed, the Court quoted with approval from a previous decision in the case of Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi, reported in AIR 1976 SC 1947, as under :

> *"Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or*

set aside :

(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

In para 10 of the judgment in Delhi Municipality's case, the Court observed as under :

> *" It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482 of the present Code."* ***(Emphasis Supplied)***

22. Applying all these principles to the facts of the present case, it may be seen that in the instant case, a chargesheet has already been filed by the police against non-applicants No.2 to 4. The applicant was not shown as an accused in that case. The applicant is unrelated to the accused in the criminal case. He is merely a Police Patil of the Village. The allegation about his involvement in

poisoning the victim comes only from Sarang, a young child, and, therefore, is allegedly an afterthought and is motivated by ulterior motive. The learned counsel for the applicant submitted that non-examination of all the witnesses mentioned in the complaint before the process was issued, is also improper and, therefore, the order is liable to be set aside.

23. The learned counsel for the non-applicant No.1/complainant stated that the role of the applicant in the offence came to light only after Sarang's custody was secured by the complainant and Sarang narrated the incident. He submitted that at this stage, it is not open to evaluate the evidence of Sarang. He, further submitted that non-examination of the other witnesses is not material, since the case would undoubtedly be tried along with the State case, since it arises out of the same incident. He submitted that the Medical Officer was cited as a witness only to prove the victim's death and the Police Officer was cited for the steps taken while registering the offence, etc. Since Sarang was the only eye-witness to the incident, who attributed a role to the applicant and the other accused, his examination was sufficient for directing issuance of process.

Therefore, according to the learned counsel for the non-applicant No. 1/complainant, the order did not call for any interference.

24. The learned Additional Public Prosecutor for State, while supporting the impugned order, submitted that there was sufficient material before the Court while issuing process. The scope of jurisdiction under Section 482 of the Code of Criminal Procedure was extremely limited and, therefore, there was no warrant for exercising that jurisdiction now in the instant case.

25. Since it would not be permissible at this stage to evaluate the evidence, the word of Sarang would have to be taken at its face value and, therefore, the objection to the non-examination of all the witnesses whom the complainant gave up by pursis Ex.4 and whose word may not go to the root of the case, need not be considered at this stage.

26. In view of this, the criminal application fails and is dismissed.

JUDGE

PDL/-